



POLICE DEPARTMENT

November 21, 2019

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In the Matter of the Charges and Specifications : Case No.
- against - : 2019-21241
Police Officer Danny Guzman :
Tax Registry No. 924667 :
Manhattan Court Section :

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At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Jeff S. Adler
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Javier Seymore, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For the Respondent: Craig Hayes, Esq.
Worth, Longworth & London, LLP
111 John Street, Suite 640
New York, NY 10038

To:
HONORABLE JAMES P. O'NEILL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

CHARGES AND SPECIFICATIONS

1. Said Police Officer Danny Guzman, while assigned to the 33rd Precinct, on December 27, 2018, while on-duty, in New York County, wrongfully engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit: said Police Officer Guzman wrongfully accepted a bottle of alcohol from an individual known to the Department in exchange for a PBA Card.

P.G. 203-10, Page 1, Paragraph 5

P.G. 203-16

**PUBLIC CONTACT –
PROHIBITED CONDUCT
GENERAL REGULATIONS –
GUIDELINES FOR ACCEPTANCE
OF GIFTS AND OTHER
COMPENSATION BY MEMBERS
OF THE SERVICE**

2. Said Police Officer Danny Guzman, while assigned to the 33rd Precinct, on December 27, 2018, while on-duty, in New York County, wrongfully entered a Department facility with a bottle of alcohol for non-official business.

P.G. 203-06, Page 1, Paragraph 3

**PERFORMANCE ON DUTY –
PROHIBITED CONDUCT
GENERAL REGULATIONS**

3. Said Police Officer Danny Guzman, while assigned to the 33rd Precinct, in New York County, on or about and between April 1, 2015 through October 31, 2019, did knowingly associate with a person or organization reasonably believed to be engaged in, likely to engage in, or to have engaged in criminal activities.

P.G. 203-10, Page 1, Paragraph 2(c)

**PUBLIC CONTACT –
PROHIBITED CONDUCT**

4. Said Police Officer Danny Guzman, while assigned to the 33rd Precinct, while off-duty, in Bronx County and Queens County, on or about and between April 28, 2006 and July 26, 2019, did wrongfully and without just cause engage in off-duty employment without authority or permission to do so.

P.G. 205-40, Page 1, Paragraph 1

OFF-DUTY EMPLOYMENT

5. Said Police Officer Danny Guzman, while assigned to the 33rd Precinct, while off-duty, in Queens County, on or about and between November 18, 2018 through July 26, 2019, wrongfully performed off-duty employment on fifty-nine (59) separate occasions three (3) hours prior to his regularly scheduled tour of duty.

P.G. 205-40, Page 6, Additional Data (c)(5)

OFF-DUTY EMPLOYMENT

6. Said Police Officer Danny Guzman, while assigned to the 33rd Precinct, while on-duty, in New York County, on or about and between November 21, 2018 through July 18, 2019, did fail and neglect to submit UF-28 leave of Absence Reports on thirty-eight (38) occasions resulting in regular compensation for a total of fifty-four (54) hours and thirty-seven (37) minutes that he did not in fact work.

P.G. 203-20, Page 1, Paragraph 1

AUTHORIZED LEAVE

7. Said Police Officer Danny Guzman, while assigned to the 33rd Precinct, while on-duty, in New York County, on or about and between November 21, 2018 through July 18, 2019, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer was compensated for enforcement duties not performed during overtime on six (6) occasions, for a total of eleven (11) hours and ten (10) minutes.

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT –
PROHIBITED CONDUCT

8. Said Police Officer Danny Guzman, while assigned to the 33rd Precinct, while on-duty, in New York County, on or about and between November 21, 2018 through July 18, 2019, wrongfully caused false entries to be made in Department records to wit: said Police Officer was compensated for enforcement duties not performed during overtime on six (6) occasions.

P.G. 203-05, Page 1, Paragraph 4

PERFORMANCE ON DUTY –
GENERAL REGULATIONS

9. Said Police Officer Danny Guzman, while assigned to the 33rd Precinct, while on-duty, in New York County, on or about and between November 21, 2018 through July 18, 2019, did fail and neglect to make proper Activity Log entries on forty-one (41) occasions.

P.G. 212-08

ACTIVITY LOGS

10. Said Police Officer Danny Guzman, while assigned to the 33rd Precinct, while on-duty, in New York County, on or about and between November 21, 2018 through July 18, 2019, wrongfully was absent from said assignment without permission or police necessity on three (3) separate occasions for non-Departmental business.

P.G. 203-05 Page 1, Paragraph 2

PERFORMANCE ON DUTY –
GENERAL

11. Said Police Officer Danny Guzman, while assigned to the 33rd Precinct, while on-duty, in New York County, on or about and between January 2, 2017 through October 30, 2019, did fail and neglect to comply with the Departments requirements by adding an off-duty firearm a Beretta, Model 800, 9MM to his Force Record.

P.G. 204-10

HANDGUN PURCHASE

12. Said Police Officer Danny Guzman, while assigned to the 33rd Precinct, while on-duty, in New York County, on or about and between November 21, 2018 through July 18, 2019, wrongfully utilized his personal vehicle while on-duty on three (3) separate occasions without prior authorization.

A.G. 325-14

PRIVATE VEHICLES
AUTHORIZATION AND USAGE

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on November 15, 2019. Respondent, through his counsel, entered a plea of Not Guilty to Specification 1, and entered pleas of Guilty to Specifications 2-12. The Department called Sergeant Jeremy Orenstein of IAB as a witness. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having reviewed all of the evidence in this matter, I find Respondent guilty of Specification 1, guilty of Specifications 2-12 to which he pleaded guilty, and recommend a penalty of forty-five (45) vacation days, fifteen (15) suspension days, and one-year dismissal probation.

ANALYSIS

In April of 2015, the NYPD's Internal Affairs Bureau ("IAB") conducted an investigation involving Person B, who was operating houses of prostitution. Audits of computer and phone records, surveillance, and wiretaps led to a spin-off investigation in the fall of 2018 into a gambling enterprise that involved an individual named Person C, who was arrested in September of 2018 on money laundering, promoting gambling, and conspiracy charges for his role as a "money runner" in the organization.

Person C also [REDACTED], which is how Respondent knew him. Wiretaps on Person C's phone uncovered a call with Respondent on December 27, 2018; the circumstances surrounding that call will be discussed in Specification 1, below. IAB commenced an investigation into Respondent, in which they monitored the relationship between Respondent and Person C; that investigation revealed no evidence that Respondent was in any way associated with Person C's criminal enterprise, or that he ever assisted

him in his criminal activity. Nevertheless, as a result of that investigation, multiple charges have been brought against Respondent, most of which have nothing to do with Person C.

Respondent has pleaded guilty to 11 of the 12 specifications against him, contesting only Specification 1, which alleges that on December 27, 2018, he wrongfully accepted a bottle of alcohol from an individual named Person A in exchange for a PBA Card. Person A initially worked at Person C's [REDACTED], before becoming an Uber driver. It is undisputed that Respondent did hand Person A a PBA card outside the 33 Precinct that day, and that Person A handed Respondent a bottle of Johnny Walker Gold Label liquor with a retail value between \$50 and \$75, which Respondent then brought inside the stationhouse. Respondent denies, however, that the bottle of liquor he received was a payment for the PBA card.

Sergeant Jeremy Orenstein, IAB's lead investigator, testified regarding a wiretap phone call between Respondent and Person C earlier on December 27; a transcript of their conversation was admitted into evidence (Dept. Ex. 2). In that call, Person C (who is referred to as [REDACTED] in the transcript) tells Respondent that Person A had called Person C to ask whether Respondent had a PBA card to give to Person A. Person C states that he told Person A, "Listen you have to be cool with

Danny... You don't give Danny anything a gift or something so you can stimulate him..."

Respondent laughs, but says nothing in reply. (Tr. 42, 45-47)

Based on this phone call, IAB monitored the cameras at the 33 Precinct, where Respondent was assigned. Later that same day, video surveillance from those cameras (Dept. Ex. 1) shows Person A's car outside the precinct. Respondent, in a marked police car, pulls up behind, and Respondent, in uniform, approaches Person A's vehicle on the passenger side. Respondent leans in the window, and receives a brown bag from Person A; that bag contained a box with the bottle of liquor inside. Cameras inside the precinct show Respondent entering the

stationhouse carrying the bag, and making a left toward his community affairs office.

Respondent then returns to Guzman's car approximately two minutes later; it is undisputed that he handed Person A a PBA card. (Tr. 47-48, 51-53, 57-59, 79-81)

On October 23, 2019, IAB interviewed Person A; a copy of that recorded interview, and the accompanying transcript, were admitted into evidence (Dept. Ex. 3 and 3A). In that interview, Person A was asked what he had to give to Respondent in order to get the PBA card. Person A maintained that nothing was given in exchange for the card, which Person A wanted in case of tickets. Person A, who did not have a criminal record, acknowledged that he gave a bottle of liquor to Respondent, "because it was Christmas, not because he gave him a card." Under persistent questioning, Person A continued to insist that Respondent never asked for anything in exchange for the card, and that he gave Respondent the bottle of liquor only because it was Christmas. (Dept. Ex. 3A at 12, 17-18, 25-27)

Respondent testified that he has known Person C since around 2010, as Person C [REDACTED] [REDACTED]. Respondent stated that he considered Person C, [REDACTED], to be a friend, and they spoke about once a week. Respondent acknowledged that he was aware that Person C was involved in numbers, but insisted that he never discussed it with Person C, and Respondent himself did not engage in gambling. (Tr. 104-06, 116-21) Respondent also knew Person A since around 2012; Person A used to work at [REDACTED], but later became an Uber driver, which is why he asked Respondent for a PBA card on several occasions. According to Respondent, he developed a kinship with Person A, a [REDACTED], who Respondent described as "law-abiding." (Tr. 106-08, 122)

Respondent acknowledged that he spoke with Person C on December 27, 2018 about Person A's wanting a PBA card; Respondent believed that Person C was just passing on the message since he knew both Respondent and Person A. When Person C mentioned the idea of taking care of

Respondent in exchange for the PBA card. Respondent just laughed, since he did not expect anyone to give him anything in order to get a card. Respondent did not speak directly with Person A on the phone, nor did he ask for something in exchange for the card. Indeed, Respondent was surprised when Person A handed him the bottle of liquor, though Respondent admitted that he now recognizes that it was a mistake to accept it. (Tr. 109-11, 124-25) Section 203 16 of the Patrol Guide states, "It is the policy of the Department that members of the service may not accept any reward, gratuity, gift or other compensation for any service performed as a result of or in conjunction with their duties as public servants." Members of service also are prohibited from soliciting a gift. When a member of service is offered a gift, there are specific procedures to follow, including notifying the commanding officer prior to the acceptance of the gift.

Here, Respondent does not contest that on December 27 he received a bottle of liquor from Person A, and provided Person A with a PBA card; the interaction is captured on videotape, and both Respondent and Person A have acknowledged what took place. Respondent insists, however, that he did not request any compensation for the card, and he was caught by surprise when handed the bottle of liquor. Person A, himself, maintained that the bottle of liquor was a Christmas gift to Respondent, and not given in exchange for the card.

Even so, I find that Respondent committed misconduct by accepting the bottle of liquor and bringing it to his office, rather than reporting it to his commanding officer. Respondent, while in uniform, in front of his precinct in public view, received the bottle, valued at \$50-\$75, then gave the individual a PBA card. As an experienced member of service, it should have occurred to Respondent that accepting the bottle of liquor under these circumstances was problematic, that in the very least it created an appearance of an improper exchange. Respondent failed to exercise sound judgment in this situation, and I find him guilty of Specification 1.

Respondent pleaded guilty to the remaining 11 specifications, and offered evidence in mitigation:

Specification 2 alleges that Respondent wrongfully entered the 33 Precinct with the bottle of alcohol he had just received from Person A. Respondent confirmed that after receiving the bottle, he brought it to his office in the precinct. He acknowledged that doing so was a mistake. (Tr. 110-11)

Specification 3 alleges that Respondent wrongfully associated with Person C, an individual who he knew was involved in criminal gambling. As indicated above, Respondent conceded that he maintained a friendship with Person C, [REDACTED] [REDACTED], since about 2010, speaking with him approximately once a week.

They attended a few social gatherings together and had visited one another's homes occasionally. He recalled hearing customers at the grocery store yelling numbers to Person C, and on one occasion saw him take numbers from a woman at a clothing store where Respondent worked, which gave him the "idea" that Person C was involved in gambling. At the time, Respondent believed it was acceptable for him to continue associating with Person C because he, himself, was not in any way involved in the gambling enterprise, and never even spoke with Person C about it. Respondent testified that he now realizes it was a "misjudgment" on his part, and that he was "totally wrong" in failing to discontinue any friendship or association with Person C. (Tr. 104-06, 116-21)

Specification 4 alleges that Respondent engaged in unauthorized off-duty employment from April 2006 to July 2019, while Specification 5 alleges that he performed off-duty employment within three hours of his regularly scheduled tour on 59 occasions. Respondent testified that in order to assist in paying household bills, he had 2 off-duty jobs -- one at Delta Airlines and one where he worked security at a clothing store in the Bronx. Initially, he obtained the required Department authorization for the Delta job, but Respondent allowed that

authorization to lapse in May 2019 since he was planning to retire within the year. With respect to the clothing store, Respondent stated that he never thought to apply for authorization because he worked there so sporadically, with frequent gaps including one that lasted about six years. As to Specification 5, Respondent admitted to violating Patrol Guide Section 205-40 that prohibits officers from working within three hours of the start of a tour because that allowed him to work the only shift available at Delta. He confirmed that he did not attempt to obtain a tour change, since that would have caused him to arrive home each day at a later time. (Tr. 95-99, 114-15)

Specifications 6, 7, 8, and 9 involve issues related to time and documentation.

Specifically, Specification 6 alleges that Respondent failed to submit Leave of Absence Reports on 38 occasions for a total of 54 hours; Specifications 7 and 8 charge Respondent with being compensated for overtime not performed on six occasions for a total of 11 hours; Specification 9 alleges a failure to make required Activity Log entries over an eight-month period. Respondent testified that as a community affairs officer for about six years, he received a great deal of freedom and flexibility in his schedule in order to attend various community events and meetings. He acknowledged that he sometimes failed to fill out reports that documented this additional activity, and agreed that some of it was his "own fault" for becoming relaxed with respect to filling out paperwork and abusing the flexibility given to him as the community affairs officer. (Tr. 100-03)

Specifications 10 charges Respondent with being absent from his assignment on three occasions, and Specification 12 alleges that he wrongfully used his personal vehicle on these three dates while on-duty. Respondent testified that on these three occasions he traveled a short distance to his home in order to check on his wife [REDACTED]

[REDACTED]. He stated he did this a few times when she did not answer the phone, which caused concern. Respondent conceded that he did not make

supervisors aware of this issue, testifying that he "didn't want anybody to know." (Tr. 101-02, 115-16)

Specification 11 charges Respondent with failing to add an off-duty firearm that he obtained in 2017 to his Force Record. Respondent testified that he had the gun inspected at the range, completed the firearm acquisition disposition form, and had it logged in by his sergeant at the precinct. However, Respondent admitted that he carelessly neglected to add the firearm to his "10 card." (Tr. 103-04)

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on July 15, 1999. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum. Respondent has no disciplinary record. He has received one medal for Meritorious Police Duty, and has consistently received overall ratings of 4.5, "Extremely Competent/Highly Competent," on his annual performance reviews.

The Department Advocate asks that Respondent be dismissed from the Department, while counsel for Respondent asks for a lesser penalty. After carefully observing Respondent testify, and reviewing the evidence in this matter, I am not persuaded that Respondent's conduct here was so egregious as to warrant termination.

On the one hand, this tribunal is mindful that Respondent committed multiple acts of misconduct, including accepting a bottle of liquor from an individual to whom he provided a PBA card. Even though there was no evidence that Respondent, a community affairs officer tasked with the responsibility of fostering community relations, ever asked for a gift in exchange for the PBA card, it still constituted misconduct for Respondent to accept the bottle of liquor

from Person A. Respondent also admitted to wrongful association with Person C, whom he knew was involved in a gambling enterprise, and there must be appropriate accountability for Respondent's actions. It is important to emphasize, however, that this was not a case where Respondent, himself, was implicated in any way as assisting in that enterprise; he did not, for instance, conduct unauthorized computer inquiries on Person C's behalf, and there was no evidence that he acted in furtherance of the illegal business in any way. Also, this was not a situation where Respondent was instructed by the Department to cease his association, and then ignored that instruction. As counsel for Respondent noted, the wrongful association in this case typically results in a loss of vacation days, not termination. The same can be said for the remaining counts, where Respondent readily acknowledged his misconduct.

Indeed, Respondent appeared to demonstrate sincere remorse for his actions in this matter. As Respondent explained how his entire life has been dedicated to the Department, since he was recruited through the Cadet Corps in 1997, there was a sense that he was genuinely distraught at the idea that he is leaving the job under these circumstances. He noted that four or five family members have become police officers and look up to him, and lamented, "For me to go out like this, it doesn't make any sense."

At the same time, Respondent did acknowledge that he committed misconduct, and is deserving of punishment. It is important, though, that the penalty be proportional to the misconduct committed. In *Disciplinary Case No. 2008-83571* (Dec. 18, 2009), a five-year police officer with no disciplinary record forfeited 45 vacation days and was placed on one-year dismissal probation following a mitigation hearing for accepting \$400 worth of gift cards from an individual in exchange for giving him a PBA card, and then using the gift cards to purchase electronics, behavior similar to the most serious misconduct in this case. The respondent there

also pled guilty to wrongfully making three inquiries on a Mobile Digital Terminal that were not related to official Department business.

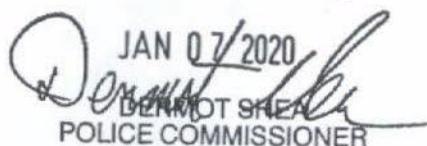
The exchange in that case, where Respondent received \$400 worth of gift cards, was more egregious than what occurred in the present case. However, given the multiple counts of misconduct in this case, a comparable, though slightly higher, penalty is appropriate here. Taking into account the totality of the facts and circumstances in this matter, including Respondent's strong record encompassing just over 20 years with the Department, I recommend that Respondent forfeit forty-five (45) vacation days, be suspended for fifteen (15) days without pay, and that he be DISMISSED from the New York City Police Department, but that his dismissal be held in abeyance for a period of one (1) year pursuant to Section 14-115 (d) of the Administrative Code, during which time Respondent will remain on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings.

Respectfully submitted,



Jeff S. Adler
Assistant Deputy Commissioner Trials

APPROVED



JAN 07/2020
DERMOT SHEA
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER DANNY GUZMAN
TAX REGISTRY NO. 924667
DISCIPLINARY CASE NO. 2019-21241

Respondent was appointed to the Department on July 15, 1999.

On his last three annual performance evaluations, he received 4.5 overall ratings of "Extremely Competent/Highly Competent" in 2014, 2015 and 2016. Respondent has been awarded one medal for Meritorious Police Duty.

[REDACTED]

Respondent has no disciplinary history. In connection with the instant matter, he was placed on Level 1 Discipline Monitoring on October 31, 2019; monitoring remains ongoing.

For your consideration.

A handwritten signature in black ink, appearing to read "Jeff S. Adler".

Jeff S. Adler
Assistant Deputy Commissioner Trials